

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 681 OF 2016

Roshan Rohidas Halpatrao

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Pankaj D. Kavale Advocate for Applicant.

Mr. Arfan Sait APP for the State.

Ms. Madhuri B. Gaikwad, PSI, Shivaji Nagar
Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 6th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 30/06/2015 in crime no. 203 of 2015 registered at Shivaji Nagar Police Station for offence punishable under sections 302, 143, 144, 147, 148, 149 of the Indian Penal Code. Investigation is completed and charge-sheet is filed on 19/09/2015.

2) It is the case of the prosecution that one Nikhil Sidhu was working in Jay Ambe Hotel (Golden Punjab dumping ground) at Ambernath East. The job assigned to him was to collect the bills of chicken supplied to other hotels.

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On 22/06/2015, brother of Nikhil lodged a report at the police station alleging therein that on 22/06/2015, two employees of the said hotel had been to his house and informed his mother that her son namely Nikhil has been brutally assaulted by 5 – 6 boys. They rushed to the Central Hospital, Ulhasnagar. They inquired with Nikhil about the incident and at that time, he disclosed to his parents that one person from Badlapur who is also a co-employee namely Nutan Yashwantrao had been to the hotel for depositing the amount. He had inquired with him about the book of account. There was an altercation between them. He was assaulted. The owner of the hotel namely Vikas Gill had intervened and had separated the quarrel. After sometime, Meghraj Deshmukh who happens to be relative of Nutan and 3 – 4 other boys had been to the hotel. They caught hold of him and assaulted him. He was being treated in the hospital. He succumbed to the said injuries. On the basis of the statement, crime no. 203 of 2015 was registered at Shivaji Nagar Police Station.

3) On 24/06/2015, Investigating Officer had recorded the statement of the owner of the hotel. He had admitted that there was a quarrel between Nikhil Nutan and Meghraj. He had intervened and pacified them. According to him,

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after sometime, the customer had informed the waiter that there is some quarrel going on outside the hotel and therefore, the owner, out of anxiety had climbed the terrace and seen the quarrel. He had seen that 4 persons were assaulting Nikhil. That after the assault, he had taken Nikhil to the Hospital along with other employees. Vikas has specifically named Nutan and Mahendra.

4) In the course of investigation, a motorcycle was seized from the spot. In the course of inquiry, applicant is arrested on 30/06/2015. There was a recovery of motorcycle under section 27 of the Indian Evidence Act. Motorcycle is recovered on the basis of the statement of the applicant which was given while he was in police custody.

5) In the course of investigation, test identification parade was held on 23/07/2015. Perused the memorandum of test identification parade. It is pertinent to note that the name of Nutan Yashwantrao has been scored off and the name of the present applicant has been mentioned at more than 4 -5 places. It is doubtful as to whether Nutan was put for test identification parade or it was the present applicant. *Prima facie*, interpolation is *writ large* on the face of record and in any case, the witness Vikas has identified Meghraj @

Munna, Mahendra @ Bandhu but has failed to identify Shrikant and Roshan i.e. present applicant. It also appears that co-accused Jeevan was also not identified by Vikas. On the same day, another witness was brought in for identifying the accused. The persons placed for identification by Subhash Dharmeshwar are Shrikant Khanvilkar, Roshan Halpatrao i.e. present applicant, Meghraj and Mahendra. The contents of the memorandum would show that Subhash has identified three persons as having been involved in the said case. It is pertinent to note that the names of three persons identified by Subhash are not mentioned in the memorandum panchanama and therefore, it would be doubtful as to out of 5 persons who are the persons identified by Subhash Dharmeshwar.

6) The learned APP submits that there are C.D.R. details to indicate that Shrikant Khanvilkar had called upon the present applicant at the hotel. The C.D.R. Details do not form part of the compilation of the charge-sheet. The learned APP further submits that the application under section 439 of the Code of Criminal Procedure, 1973 filed by Jeevan has been rejected by this Court (Coram: N. W. Sambre, J.) vide order dated 15/12/2016 and therefore, present applicant also deserves to be enlarged on bail.

7) It appears from the records that Jeevan was arrested on the basis of the statement of the co-accused. Upon perusal of papers of investigation, this Court is of the opinion that applicant deserves bail firstly on the ground that there is no direct evidence against him, secondly, there is interpolation as far as his name is concerned in the memorandum of test identification parade, thirdly Vikas has not identified the present applicant and fourthly that Subhash Dharmeshwar has not specifically named the present applicant as the person whom he had seen at the scene of offence or that he had seen him assaulting deceased Nikhil. It is in this circumstance, applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall not reside at Ambarnath till the framing of charge.

- (iv) Applicant shall report to Kalyan Police Station on first Sunday of each month till the framing of charge.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)